

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>JAMES ELSTON,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2:18-cv-00019 RLW</b>
<b>v.</b>	)	
	)	
<b>JOHNNIE POLLARD, et al.</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S  
ADDITIONAL DECLARATORY STATEMENT**

Defendants Johnnie Pollard and Joshua Zuccarini respond to Plaintiff's additional declaratory statement. [Doc. #23]

In regards to these Defendants, Plaintiff's Complaint refers to incidents that occurred at Moberly Correctional Center ("MCC") between October 2017 and February 2018. [Doc. #1, p. 8] Plaintiff stated in his complaint that he exhausted the grievance procedure in relation to these claims.

Plaintiff's additional declaratory statement is in regard to an incident that occurred on September 18, 2018 (one week ago) at Tipton Correctional Center ("TCC"). This incident is not related to these defendants. Moreover, Plaintiff's previous grievances could not have encompassed an incident that occurred on September 18, 2018.

If Plaintiff is seeking to file additional claim, he must file a new lawsuit. Pursuant to the Prison Litigation Reform Act (“PLRA”) he must exhaust the grievance procedure in order to file a lawsuit. The grievance procedure in most Missouri prisons takes a minimum of two months to complete. As Plaintiff dated his declaration the same day that the incident at TCC occurred, he could not have exhausted the grievance procedure.

Plaintiff appears to be attempting to amend the complaint to add this additional incident. Defendants request that this motion be denied for failure to comply with the PLRA.

Respectfully submitted,

**JOSHUA D. HAWLEY**  
Attorney General

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*Attorneys for Defendants*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26<sup>th</sup> day of September, 2018, a copy of the foregoing was filed via the Court's electronic filing system and a copy was mailed first class, postage prepaid, to:

James Elston, #1277919  
Tipton Correctional Center  
619 North Osage Avenue  
Tipton, MO 65081

*Plaintiff Pro Se*

/s/ Katherine S. Walsh